

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM MARTINEZ.

Plaintiff,

V.

M. JIMENEZ, et al.,

Defendants.

Case No. 1:23-cv-00177-EPG (PC)

FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION BE DISMISSED, WITH PREJUDICE

(ECF No. 9)

**OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS**

**ORDER DIRECTING CLERK TO ASSIGN
DISTRICT JUDGE**

William Martinez (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

Plaintiff filed the complaint commencing this action on February 6, 2023. (ECF No. 1). Plaintiff alleges that he was subjected to a false RVR and an atypical and significant hardship because he threatened to file a 602 and because of his membership in the Northern Structure. On May 16, 2023, the Court screened Plaintiff's complaint and found that it failed to state any cognizable claims. (ECF No. 6). The Court gave Plaintiff thirty days to either: "a. File a First Amended Complaint; or b. Notify the Court in writing that he wants to stand on his complaint." (Id. at 10). Plaintiff filed his First Amended Complaint on July 20, 2023. (ECF No. 9).

1 The Court has reviewed Plaintiff's First Amended Complaint, and for the reasons
2 described in this order, will recommend that this action be dismissed.

3 Plaintiff has twenty-one days from the date of service of these findings and
4 recommendations to file his objections.

5 **I. SCREENING REQUIREMENT**

6 The Court is required to screen complaints brought by prisoners seeking relief against a
7 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
8 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
9 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or
10 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
11 § 1915A(b)(1), (2). As Plaintiff is proceeding *in forma pauperis* (ECF No. 4), the Court may
12 also screen the complaint under 28 U.S.C. § 1915. "Notwithstanding any filing fee, or any
13 portion thereof, that may have been paid, the court shall dismiss the case at any time if the court
14 determines that the action or appeal fails to state a claim upon which relief may be granted."
15 28 U.S.C. § 1915(e)(2)(B)(ii).

16 A complaint is required to contain "a short and plain statement of the claim showing
17 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
18 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
19 conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
20 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A plaintiff must set forth "sufficient
21 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id.
22 (quoting Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
23 this plausibility standard. Id. at 679. While a plaintiff's allegations are taken as true, courts
24 "are not required to indulge unwarranted inferences." Doe I v. Wal-Mart Stores, Inc., 572 F.3d
25 677, 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a
26 plaintiff's legal conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

27 Pleadings of *pro se* plaintiffs "must be held to less stringent standards than formal
28 pleadings drafted by lawyers." Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that

1 *pro se* complaints should continue to be liberally construed after Iqbal).

2 **II. SUMMARY OF PLAINTIFF'S FIRST AMENDED COMPLAINT**

3 Plaintiff alleges as follows in his First Amended Complaint ("FAC").

4 On November 1, 2018, there was an incident on the prison yard. After the victim was
5 taken from the prison yard, 6 suspects were cuffed and removed from the yard. Approximately
6 50 inmates were placed in flexy cuffs, which are plastic ties used to second inmates, and
7 "pronked out" on the ground while officers secured the crime scene, took photographs, and
8 collected evidence.

9 Institutional Gang Investigator (IGI) M. Jimenez approached Plaintiff and said "Billy,
10 what are you doing over here? . . . All the shotcallers are on the other side of the yard. You
11 ought to be taken as well). Plaintiff responded that he had not done anything wrong. Plaintiff
12 threatened to file a 602 grievance against IGI Jimenez. IGI Jimenez responded "So you think
13 you're special because you're a Big Homie. But I'm the one who makes the decisions around
14 here." Plaintiff believes the term "Big Homie" refers to Plaintiff's alleged Northern Structure
15 (NS) affiliation and validation as part of a Hispanic Prison Gang. Plaintiff responded "You
16 can't do that. That's discrimination." Plaintiff was searched and sent back to his cell.

17 The next day, IGI Jimenez put Plaintiff under arrest and placed him in Administrative
18 Segregation.

19 Plaintiff has had multiple encounters with IGI Jimenez in the past. IGI Jimenez has
20 searched Plaintiff's cell, confiscated his mail, and interrogated him because of Plaintiff's
21 alleged NS affiliation.

22 Over 20 officers wrote reports about the incident, and the reports did not mention
23 Plaintiff. However, IGI Jimenez submitted a false report against Plaintiff. The report was
24 based on 1 of 3 recorded videos, which did not show Plaintiff being involved in this incident.
25 Even though there were approximately 25-30 documented Northern Hispanic inmates in the
26 vicinity, Plaintiff was the only validated Northern Structure member targeted by IGI Jimenez.
27 Despite there being no real evidence against Plaintiff, IGI Jimenez falsified a report. As a
28 result, Plaintiff was put in Administrative Segregation for over 485 days.

1 Several officers, including Disciplinary Senior Hearing Officer Lt. R. Siodia, Lieutenant
2 J.G. Lopez, Correctional Captain R. Kuhn, and Correctional Lieutenant R. Redding all
3 reviewed the evidence. Each of the officers had the obligation to protect Plaintiff's due process
4 rights. Instead, they all allowed the erroneous report to stand, which resulted in Plaintiff being
5 put in Administrative Segregation for 485 days. However, they released 4 of 6 other inmates
6 who had been detained in Administrative Segregation, despite the fact that those other inmates
7 had blood on their persons, and were photographed by the crime scene investigators.

8 Plaintiff believes he was put in Administrative Segregation because they believed he
9 was a shot-caller of a prison gang. Plaintiff was also transferred to another institution.

10 Plaintiff brings three claims: retaliation in violation of the First Amendment, violation
11 of the right to due process, and violation of the right to equal protection. He names as
12 defendants M. Jimenez, J.G. Lopez, R. Redding, and R. Kuhn.

13 **III. ANALYSIS OF PLAINTIFF'S COMPLAINT**

14 **A. Section 1983**

15 The Civil Rights Act under which this action was filed provides:

16 Every person who, under color of any statute, ordinance, regulation, custom, or
17 usage, of any State or Territory or the District of Columbia, subjects, or causes
18 to be subjected, any citizen of the United States or other person within the
jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress. . . .

20 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely
21 provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor,
22 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see
23 also Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los
24 Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir.
25 2012); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

26 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
27 under color of state law, and (2) the defendant deprived him of rights secured by the
28 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.

1 2006); see also Marsh v. County of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
2 “under color of state law”). A person deprives another of a constitutional right, “within the
3 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
4 omits to perform an act which he is legally required to do that causes the deprivation of which
5 complaint is made.’” Preschooler II v. Clark County Sch. Bd. of Trs., 479 F.3d 1175, 1183
6 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
7 causal connection may be established when an official sets in motion a ‘series of acts by others
8 which the actor knows or reasonably should know would cause others to inflict’ constitutional
9 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
10 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
11 Arnold v. Int'l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
12 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

13 A plaintiff must demonstrate that each named defendant personally participated in the
14 deprivation of his rights. Iqbal, 556 U.S. at 676-77. In other words, there must be an actual
15 connection or link between the actions of the defendants and the deprivation alleged to have
16 been suffered by the plaintiff. See Monell v. Dep’t of Soc. Servs. of City of N.Y., 436 U.S.
17 658, 691, 695 (1978).

18 Supervisory personnel are not liable under section 1983 for the actions of their
19 employees under a theory of *respondeat superior* and, therefore, when a named defendant
20 holds a supervisory position, the causal link between the supervisory defendant and the claimed
21 constitutional violation must be specifically alleged. Iqbal, 556 U.S. at 676-77; Fayle v.
22 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.
23 1978). To state a claim for relief under section 1983 based on a theory of supervisory liability,
24 a plaintiff must allege some facts that would support a claim that the supervisory defendants
25 either: were personally involved in the alleged deprivation of constitutional rights, Hansen v.
26 Black, 885 F.2d 642, 646 (9th Cir. 1989); “knew of the violations and failed to act to prevent
27 them,” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); or promulgated or “implement[ed]
28 a policy so deficient that the policy itself is a repudiation of constitutional rights and is the

1 moving force of the constitutional violation,” Hansen, 885 F.2d at 646 (citations and internal
2 quotation marks omitted).

3 For instance, a supervisor may be liable for his or her “own culpable action or inaction
4 in the training, supervision, or control of his [or her] subordinates,” “his [or her] acquiescence
5 in the constitutional deprivations of which the complaint is made,” or “conduct that showed a
6 reckless or callous indifference to the rights of others.” Larez v. City of Los Angeles, 946 F.2d
7 630, 646 (9th Cir. 1991) (citations, internal quotation marks, and brackets omitted).

8 B. Retaliation

9 There are five basic elements to a First Amendment retaliation claim: “(1) An assertion
10 that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s
11 protected conduct, and that such action (4) chilled the inmate’s exercise of his First
12 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional
13 goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote omitted).

14 “[A] plaintiff who fails to allege a chilling effect may still state a claim if he alleges he
15 suffered some other harm,’ *Brodheim*, 584 F.3d at 1269, that is ‘more than minimal,’ *Robinson*,
16 408 F.3d at 568 n.11. That the retaliatory conduct did not chill the plaintiff from suing the
17 alleged retaliator does not defeat the retaliation claim at the motion to dismiss stage. *Id.* at
18 569.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (alteration in original).

19 While prisoners have no freestanding right to a prison grievance process, see Ramirez v.
20 Galaza, 334 F.3d 850, 860 (9th Cir. 2003), “a prisoner’s fundamental right of access to the
21 courts hinges on his ability to access the prison grievance system,” Bradley v. Hall, 64 F.3d
22 1276, 1279 (9th Cir. 1995), overruled on other grounds by Shaw v. Murphy, 532 U.S. 223, 230
23 n.2 (2001). Because filing administrative grievances and initiating civil litigation are protected
24 activities, it is impermissible for prison officials to retaliate against prisoners for engaging in
25 these activities. Rhodes, 408 F.3d at 567.

26 Plaintiff alleges that on November 1, 2018, after a victim was taken off the prison yard,
27 IGI Jimenez accused him of being a shot-caller for a prison gang and said he should be put in
28 Administrative Segregation. Plaintiff responded that he did nothing wrong and threatened to

1 file a 602 grievance against IGI Jimenez. IGI Jimenez responded “So you think you’re special
2 because you’re a Big Homie. But I’m the one who makes decisions around here.” IGI Jimenez
3 later filed an allegedly false report accusing Plaintiff of committing a crime against the victim
4 based on a video, which Plaintiff claims did not show him being involved in the crime.

5 The Court finds that Plaintiff fails to state a retaliation claim under the First
6 Amendment. As to defendant Jimenez, while Plaintiff alleges that he threatened to file a 602
7 grievance against IGI Jimenez, Plaintiff does not sufficiently allege that defendant Jimenez
8 subjected Plaintiff to false charges because of it. According to Plaintiff’s description of the
9 events, IGI Jimenez had already accused Plaintiff of being involved in the crime even before
10 Plaintiff said he would file a 602 against IGI Jimenez. Also, Plaintiff does not allege that IGI
11 Jimenez said anything to indicate he was accusing Plaintiff of the crime because Plaintiff said
12 he would file a 602 grievance. In fact, Plaintiff alleges that IGI Jimenez falsely reported that
13 Plaintiff was involved in the crime because he believed Plaintiff was a shot-caller of a prison
14 gang and not because Plaintiff had threatened to file a 602 against him. Thus, even if
15 Plaintiff’s allegations are true, they would not establish a claim for retaliation in violation of the
16 First Amendment based on Plaintiff saying he would file a 602 grievance.

17 To the extent Plaintiff alleges that IGI Jimenez filed the report against Plaintiff because
18 Plaintiff was allegedly part of the NS prison gang, this would also not state a claim for
19 retaliation under the First Amendment because being part of a prison gang is not
20 constitutionally protected conduct. Thus, even if IGI Jimenez filed charges against Plaintiff
21 due to his alleged gang affiliation, this would not be retaliation against Plaintiff for exercise of
22 a constitutional right.

23 The Court also finds that Plaintiff fails to state a retaliation claim against the
24 supervisory defendants. There are no allegations suggesting that these defendants retaliated
25 against Plaintiff for engaging in protected conduct.

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1 C. Procedural Due Process¹

2 The Due Process Clause of the Fourteenth Amendment protects prisoners from being
 3 deprived of life, liberty, or property without due process of law. Wolff v. McDonnell, 418 U.S.
 4 539, 556 (1974). The procedural guarantees of the Fifth and Fourteenth Amendments' Due
 5 Process Clauses apply only when a constitutionally protected liberty or property interest is at
 6 stake. Ingraham v. Wright, 430 U.S. 651, 672-73 (1977).

7 The United States Supreme Court, in a case involving a disciplinary proceeding that
 8 resulted in a punishment of thirty days in solitary confinement, held that while States may
 9 create liberty interests, “these interests will be generally limited to freedom from restraint
 10 which, while not exceeding the sentence in such an unexpected manner as to give rise to
 11 protection by the Due Process Clause of its own force, see, e.g., *Vitek*, 445 U.S., at 493, 100
 12 S.Ct., at 1263–1264 (transfer to mental hospital), and *Washington*, 494 U.S., at 221–222, 110
 13 S.Ct., at 1036–1037 (involuntary administration of psychotropic drugs), nonetheless imposes
 14 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison
 15 life.” Sandin v. Conner, 515 U.S. 472, 483-84 (1995). In Sandin, the Supreme Court held that
 16 neither thirty days in solitary confinement nor issuance of a Rules Violation Report that could
 17 be used in parole proceedings were substantial enough deprivations of liberty interests to
 18 trigger procedural due process protections.

19 Even if a liberty interest is at stake, “[p]rison disciplinary proceedings are not part of a
 20 criminal prosecution, and the full panoply of rights due a defendant in such proceedings does
 21 not apply.” Wolff, 418 U.S. at 556. Wolff established five constitutionally mandated
 22 procedural requirements for disciplinary proceedings. First, “written notice of the charges must
 23 be given to the disciplinary-action defendant in order to inform him of the charges and to
 24 enable him to marshal the facts and prepare a defense.” Id. at 564. Second, “at least a brief
 25 period of time after the notice, no less than 24 hours, should be allowed to the inmate to prepare

27 ¹ Plaintiff mentions the Eighth Amendment, but as discussed below, it is the Fourteenth
 28 Amendment that prevents prison officials from subjecting an inmate to an atypical and significant
 hardship on the inmate in relation to the ordinary incidents of prison life without providing due process.

1 for the appearance before the [disciplinary committee].” Id. Third, “there must be a ‘written
2 statement by the factfinders as to the evidence relied on and reasons’ for the disciplinary
3 action.” Id. (quoting Morrissey v. Brewer, 408 U.S. 471, 489 (1972)). Fourth, “the inmate
4 facing disciplinary proceedings should be allowed to call witnesses and present documentary
5 evidence in his defense when permitting him to do so will not be unduly hazardous to
6 institutional safety or correctional goals.” Id. at 566. And fifth, “[w]here an illiterate inmate is
7 involved [or] the complexity of the issue makes it unlikely that the inmate will be able to
8 collect and present the evidence necessary for an adequate comprehension of the case, he
9 should be free to seek the aid of a fellow inmate, or . . . to have adequate substitute aid . . .
10 from the staff or from a[n] . . . inmate designated by the staff.” Id. at 570. Additionally, “some
11 evidence” must support the decision of the hearing officer. Superintendent v. Hill, 472 U.S.
12 445, 455 (1985). The standard is not particularly stringent and the relevant inquiry is whether
13 “there is any evidence in the record that could support the conclusion reached. . . .” Id. at 455-
14 56.

15 Plaintiff alleges that he was punished by being put in administrative segregation for 18
16 months. The Court finds that, for screening purposes, Plaintiff sufficiently alleges that he was
17 subjected to an atypical and significant hardship in relation to the ordinary incidents of prison
18 life.

19 However, Plaintiff does not sufficiently allege that he was not provided with due
20 process of law. Despite being informed of the procedural requirements in the Court’s first
21 screening order, Plaintiff’s FAC does not allege that any of these procedural requirements were
22 violated. Plaintiff alleges that numerous officers viewed the evidence and erroneously
23 concluded that Plaintiff was involved in the crime, but Plaintiff does not describe the actual
24 hearing that resulted in the Administrative Segregation. (Nor does he claim that he failed to
25 receive any hearing). Instead, Plaintiff appears to allege that the hearing officers violated
26 procedural due process merely because they incorrectly concluded that Plaintiff was involved
27 in a crime. But this alone does not state a violation of procedural due process.

28 Accordingly, the Court finds that Plaintiff fails to state a procedural due process claim

1 against any defendant.

2 D. Equal Protection

3 The equal protection clause requires that persons who are similarly situated be treated
 4 alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Hartmann
 5 v. California Dep’t of Corr. & Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v.
 6 Sullivan, 705 F.3d 1021, 1030 (9th Cir. 2013); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir.
 7 2008). To state a claim, Plaintiff must show that Defendants intentionally discriminated
 8 against him based on his membership in a protected class, Hartmann, 707 F.3d at 1123
 9 Furnace, 705 F.3d at 1030, Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), Thornton
 10 v. City of St. Helens, 425 F.3d 1158, 1166-67 (9th Cir. 2005), Lee v. City of Los Angeles, 250
 11 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were intentionally treated
 12 differently without a rational relationship to a legitimate state purpose, Engquist v. Oregon
 13 Department of Agr., 553 U.S. 591, 601-02 (2008), Village of Willowbrook v. Olech, 528 U.S.
 14 562, 564 (2000), Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008), North
 15 Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

16 Plaintiff appears to allege that he was treated differently because of his membership in
 17 the NS gang. He supports this allegation by explaining that IGI Jimenez initially investigated
 18 him based on his belief that Plaintiff was a shot-caller in a prison gang. However, prison gang
 19 members are not a protected class in the same way that classes such as race and gender are.
 20 Indeed, whether someone is a shot-caller for a prison gang is rationally related to the legitimate
 21 state purpose of evaluating potential suspects for a prison crime. Moreover, Plaintiff’s
 22 allegations do not indicate that he was found guilty of the crime solely on the basis of his
 23 alleged gang membership. Instead, Plaintiff alleges that IGI Jiminez relied on a video, and that
 24 various evidence was reviewed by the hearing officers. While Plaintiff disagrees with their
 25 evaluation of that evidence, Plaintiff’s allegations do not state a claim for equal protection
 26 based on being a member of the NS gang.

27 Additionally, his allegations that he was treated differently because of his membership
 28 in the Northern Structure are conclusory. There are no allegations, such as anything a

1 defendant said or did, suggesting that Plaintiff was treated differently because of his
2 membership in the Northern Structure. Plaintiff does allege, in a conclusory fashion, that there
3 is a “practice” of discrimination against NS members, but there are no factual allegations
4 suggesting that any other members of NS were treated differently because of their NS
5 membership.

6 Accordingly, the Court finds that Plaintiff fails to state an equal protection claim against
7 any defendant.

8 **IV. CONCLUSIONS, ORDER, AND RECOMMENDATIONS**

9 The Court recommends dismissing Plaintiff’s case with prejudice based on failure to
10 state a claim. Moreover, the Court does not recommend further leave to amend. The Court
11 previously screened Plaintiff’s complaint and provided analysis and legal standards. Plaintiff
12 has filed an amended complaint with the benefit of the Court’s screening order; however,
13 Plaintiff’s complaint still fails to state a cognizable claim.

14 Accordingly, IT IS ORDERED that the Clerk of Court is directed to assign a district
15 judge to this case.

16 And IT IS RECOMMENDED as follows:

17 1. This case be dismissed, with prejudice, for failure to state a claim.
18 2. The Clerk of Court be directed to close this action.

19 These findings and recommendations are submitted to the United States district judge
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-
21 one (21) days after being served with these findings and recommendations, Plaintiff may file
22 written objections with the Court. Such a document should be captioned “Objections to
23 Magistrate Judge’s Findings and Recommendations.”

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1 Plaintiff is advised that failure to file objections within the specified time may result in
2 the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
3 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4 IT IS SO ORDERED.
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6 Dated: August 15, 2023

7 /s/ *Eric P. Groj*
8 UNITED STATES MAGISTRATE JUDGE

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